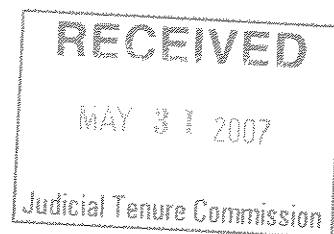


STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION



COMPLAINT AGAINST:

Hon. Beverley Nettles-Nickerson
30th Circuit Court
Veterans Memorial Courthouse
313 W. Kalamazoo St.
PO Box 40771
Lansing, MI 48901

Docket No.
Formal Complaint No. 81

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Hon. Beverley Nettles-Nickerson, by her attorney Philip J. Thomas, answers
Formal Complaint No. 81 (Complaint) as follows:

- 1) Judge Nettles-Nickerson admits this paragraph. She has been a licensed Michigan attorney since 1984. She was appointed to the 54A District Court bench in 1990 by Governor Blanchard. Following her 12 years of service as a district court judge, in 2002 Judge Nettles-Nickerson ran and successfully won a seat on the Ingham County 30th Circuit Court bench, where she has faithfully served since 2003.
- 2) Judge Nettles-Nickerson admits this paragraph.

COUNT I: FRAUDULENT CLAIM OF RESIDENCY TO OBTAIN A DIVORCE.

- 3) Judge Nettles-Nickerson denies this paragraph in the form stated. She did become estranged from her husband and she did move out of the marital home. Judge Nettles-Nickerson felt that she had to get her children away from the

environment being created by her former husband. She temporarily stayed at a friend's home in Shiawassee County for approximately three weeks, until her new apartment was ready for occupancy. After the apartment, located in Ingham County, became available, Judge Nettles-Nickerson moved in.

- 4) Judge Nettles-Nickerson denies this paragraph as being untrue. Pursuant to her legal obligation to change her mailing address with the State Court Administrative Office, Judge Nettles-Nickerson contacted James Hughes, Region II Director of the State Court Administrative Office (SCAO) to advise him of her pending divorce and to update her mailing address. During that conversation, Judge Nettles-Nickerson informed Mr. Hughes that she would be moving into an apartment in Ingham County in approximately three weeks. On July 15, 2005, Judge Nettles-Nickerson received a letter from Mr. Hughes, which contained unsolicited information (see Attachment 1).
- 5) Judge Nettles-Nickerson admits that the divorce complaint was signed on or about August 12, 2005.
- 6) Judge Nettles-Nickerson admits this paragraph. Daniel Nickerson, Jr., Judge Nettles-Nickerson's ex-husband, informed her that he was relocating to Grand Rapids and was residing with his mother in at 4320 Kalamazoo Avenue, SE, Grand Rapids, Michigan, 48508. Judge Nettles-Nickerson's former husband is an attorney and an administrative law judge. Based upon the information Mr. Nickerson provided to her, Judge Nettles-Nickerson swore under oath that he had resided in Kent County for at least 10 days prior to the filing of the divorce

complaint. Judge Nettles-Nickerson would add that Mr. Nickerson never objected that Kent County was not the proper venue for the divorce proceedings. In fact, the attorney who took over Judge Nettles-Nickerson's divorce case provided a statement to the undersigned, indicating as follows:

...I represented Beverley Nettles-Nickerson in her divorce. Although I was not representing her at the time the complaint was filed, I took over the case shortly thereafter. Her former husband, Daniel Nickerson, represented himself.

Former judge James B. Howard acted as a mediator in the case to facilitate a mutually agreeable settlement. I recall at least one joint session as well as multiple separate caucuses. **During one of the mediation sessions, which occurred on April 18, 2006, I wanted to confirm Mr. Nickerson's residency at the time the complaint was filed. I questioned Mr. Nickerson regarding that issue, and he assured me that at the time the complaint was filed he was living at his mother's residence in Grand Rapids. Based upon his assurance, I was satisfied that venue was proper and any judgment filed would not be overturned based upon such.**

See Attachment 2 (emphasis added). To the best of Judge Nettles-Nickerson's knowledge, the summons and complaint were served on Mr. Nickerson at his Grand Rapids residence and he signed the proof of service (see Attachment 3).

- 7) Judge Nettles-Nickerson admits that she listed said address as Mr. Nickerson's address in the divorce complaint. She is unfamiliar with the residency requirements relative to federally subsidized senior citizens' buildings and is unaware as to whether 4320 Kalamazoo is a federally subsidized building. We also incorporate by reference our response to paragraph 6.
- 8) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our responses to paragraphs 6-7.

- 9) Judge Nettles-Nickerson denies this paragraph in the form stated. The complaint was filed by Judge Nettles-Nickerson's attorney on or about August 15, 2005.
- 10) Judge Nettles-Nickerson denies this paragraph as being untrue. At the time the divorce complaint was filed, Judge Nettles-Nickerson believed that her husband was residing in Kent County, as he had informed her.
- 11) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our responses to paragraphs 6 and 10.
- 12) Judge Nettles-Nickerson denies this paragraph as being untrue. We incorporate by reference our responses to paragraphs 6 and 10.
- 13) Judge Nettles-Nickerson denies this paragraph as being untrue. The Commission is apparently operating under the incorrect assumption that Mr. Nickerson had to be residing in Grand Rapids at the time the divorce was granted in order to comply with venue provisions. That assumption is absolutely incorrect. Since venue was appropriate at the time the divorce complaint was filed, Judge Nettles-Nickerson's assertion at the hearing that the allegations in the complaint were still true was completely accurate and truthful. We also incorporate by reference our responses to paragraphs 6 and 10.
- 14) Paragraphs 14(a)-(l) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

**COUNT II: MAKING FALSE STATEMENTS, SOLICITING FALSE
STATEMENTS BY OTHERS, AND/OR FABRICATING EVIDENCE.**

A. Fabricating evidence.

- 15) Judge Nettles-Nickerson admits this paragraph in part and denies it in part. Judge Nettles-Nickerson admits that she received the *Accu-Bite* case on October 29, 2005, while she was on vacation and admits that another judge heard portions of the case in her absence. Significantly, the referenced memo is dated October 28, 2005, and Judge Nettles-Nickerson was on vacation on that date.

Further, based upon information and belief, no cases were scheduled before Judge Nettles-Nickerson on October 31, 2005.¹ Judge Nettles-Nickerson's current judicial assistant and former deputy court clerk, Trinidad Morales, provided an affidavit regarding the date of October 31, 2005, stating as follows:

2. I do not have any written court note or records for the date of October 31, 2005.
3. A record of Judge Nettles-Nickerson's schedule is available through the CourtView system used for 30th Judicial Circuit Court.
4. CourtView Schedule Report for the date of October 31, 2005 [Attachment A] states "No records found."
5. CourtView Judge's Calendar Display for the date of October 31, 2005 [Attachment B] states "No Records found for Search Criteria."
6. According to the stated information, Judge Nettles-Nickerson did not have any hearings scheduled for the date of October 31, 2005.

See Attachment 4.

¹ Additionally, because of circumstances created by the Commission in its zeal to pillory Judge Nettles-Nickerson, on May 18, 2007 she voluntarily removed herself from her judicial duties until the Court decides the Petition for Interim Suspension. Since that date, she has had no access to the court or court records, including personal records maintained in her office. Her inability to gain access to such records has severely hampered her ability to answer this Complaint. Judge Nettles-Nickerson's counsel reserves the right to amend this answer as relevant information becomes available.

- 16) Judge Nettles-Nickerson admits that attorneys appeared at court and that she was advised of that. She denies that she "berated" Angela Morgan. Judge Nettles-Nickerson does not recall using profanity, but in the event that she did, her doing so would not have been directed at Ms. Morgan or other staff, but instead would have been uttered in frustration over the situation. Judge Nettles-Nickerson believed she did not have any cases docketed for that day and she was concerned regarding what appeared to be a scheduling error of some sort.

The Master should be aware that Ms. Morgan worked for Judge Nettles-Nickerson for approximately 17 years with no conflicts. On November 16, 2006, Judge Nettles-Nickerson found some documents that indicated that Ms. Morgan was seeking other employment. Upon finding those documents, Judge Nettles-Nickerson asked Ms. Morgan about her intent to secure other employment. Judge Nettles-Nickerson was concerned because at that time Ingham County had a 6-week hiring freeze in effect (see Attachment 5). Therefore Judge Nettles-Nickerson could have been left without a clerk if Ms. Morgan did, in fact, resign. Judge Nettles-Nickerson and Ms. Morgan discussed the matter and Ms. Morgan indicated that she planned to resign. Judge Nettles-Nickerson accepted the resignation and began her search for a replacement. Judge Nettles-Nickerson even attempted to assist Ms. Morgan in securing another county position (see Attachment 5, previously appended). Ms. Morgan later changed her mind about resigning, but Judge Nettles-Nickerson was reluctant to continue the employment of an individual who truly appeared to want to leave the court. Additionally, no job vacancy posting could be done until a formal resignation or

termination letter was filed. Judge Nettles-Nickerson then filed a termination letter regarding Ms. Morgan.

Ms. Morgan subsequently filed a summons and complaint concerning her termination. The County of Ingham, Judge Nettles-Nickerson, and the 30th Circuit Court were named as defendants. The complaint was served on Judge Nettles-Nickerson on March 2, 2007, after Ingham County had already been discussing a settlement without Judge Nettles-Nickerson's knowledge. Ingham County's insurance carrier assigned attorney Ethan Vinson to represent Judge Nettles-Nickerson (see Attachment 6). In an affidavit dated April 10, 2007, Mr. Vinson stated:

4. That prior to entering my Appearance, I had conversations with the attorney for the County and was advised that settlement discussions were being conducted. In fact, **I was advised that it would be considered an act of hostility if an Answer were filed.**
5. That on March 14th, I entered an Appearance in the above-referenced matter.
6. That on March 15th, I met with Judge Nettles-Nickerson to obtain background information in which to prepare an Answer to the Complaint. During the course of our meeting I told Judge Nettles-Nickerson that **I had been advised that the County was engaged in settlement talks but did not know the status of said talks since I was not a part of them.**
7. That on March 15, 2007, I contacted the attorney for the County and the Circuit Court and was advised that the case had in fact been settled.
8. **That I had no input in the settlement discussions nor was I consulted on behalf of my client.**

See Attachment 7 (emphasis added).

Thus, Judge Nettles-Nickerson had no input regarding the settlement, nor did her attorney. Based upon information and belief, the money paid to Ms. Morgan was considered a nuisance settlement by the carrier. In fact, her attorney was actually advised not to file an answer to the complaint, and further informed that doing so would be considered counterproductive.

- 17) Judge Nettles-Nickerson admits this paragraph.
- 18) Judge Nettles-Nickerson denies this paragraph in the form stated. Judge Nettles-Nickerson did provide the email (see Attachment 8) to the Commission. She originally asked Ms. Morgan to email notice regarding her vacation time for Monday, October 24, 2005 through Friday, October 28, 2005. Subsequently, Judge Nettles-Nickerson contacted Ms. Morgan and questioned her about her docket for October 31, 2005. Learning that she had no cases scheduled, Judge Nettles-Nickerson asked Ms. Morgan to add Monday, October 31, 2005 to the email as a vacation day. Ms. Morgan informed Judge Nettles-Nickerson that it would not be a problem to amend the email and add October 31, 2005 as a vacation day. Based upon what Judge Nettles-Nickerson was told, Ms. Morgan sent the email out on September 6, 2005.
- 19) Judge Nettles-Nickerson denies this paragraph as being untrue. Judge Nettles-Nickerson did come into court on October 31, 2005 to review the matter in question, despite her scheduled vacation day as referenced above. She reviewed the case and withdrew from the matter due to a conflict of interest. We also incorporate by reference our response to paragraph 18.

B. Falsehoods to justify her improper behavior.

- 20) Judge Nettles-Nickerson denies this paragraph in the form stated. Judge Nettles-Nickerson did dismiss the *Jones* case for lack of progress pursuant to MCR 2.502. No action had been taken on the file in over four months.
- 21) This allegation is admitted. Judge Nettles-Nickerson did send Greg Liepshutz a summary of a conference call held on February 5, 2007.
- 22) Judge Nettles-Nickerson did incorrectly state in her summary to Mr. Leipshultz that neither attorney appeared to save the case from being placed on the No Progress Docket, but she meant to say that neither attorney of record appeared. That was an error on her part. There was no reason or need for Judge Nettles-Nickerson to make any false claims.
- 23) Judge Nettles-Nickerson admits this paragraph in part. Donald Busta did appear at the no progress hearing on September 8, 2005. At that hearing, Mr. Busta admitted that no action was taken on the case for more than four months. Due to that fact, and pursuant to MCR 2.502, Judge Nettles-Nickerson dismissed the case for lack of progress. After the case was dismissed, David Otis, the defense attorney, called Judge Nettles-Nickerson's staff and informed them that he had left a message when he received the notice, requesting that the case be taken off of the No Progress Docket because the case was proceeding, and that "in the past, a phone call was sufficient." Even though the parties did not follow the court rule, in the interest of justice, Judge Nettles-Nickerson subsequently approved a stipulated order allowing the case to be refiled.

C. Court reporter and required breaks.

- 24) Judge Nettles-Nickerson admits this paragraph. It is important to note that pursuant to 30th Circuit Court policy, court reporters' hours are established by the judge for whom they work:

Court Reporters/Recorders are expected to work 40 hours per week. **Those hours are established by a judge to whom they are assigned and may vary from the traditional 8:00 a.m. to 5:00 p.m. schedule....**

Court Reporters/Recorders are responsible for attending court sessions and taking a verbatim record of all proceedings identified in MCR 8.108(B)(1).

See Attachment 9 (emphasis added).

On December 1, 2005, Judge Nettles-Nickerson received a memorandum from Chief Judge William E. Collette, in which he stated in part:

It has come to my attention that due to the manner you are conducting proceedings, your staff is not being given breaks and lunch hours. I attach a copy of an e-mail sent to you by Mr. Easterday in October on this issue. It is my understanding that you told Mr. Easterday that your staff was given breaks and a lunch hour. This does not appear to be the case.

All Judicial staff are covered by one of two Union Contracts for benefit purposes. Law Clerks and Court Reporters are covered by the "Ingham County Employees' Association" (ICEA) Contract. Judicial Assistants are covered by the "Managerial And Confidential Employee Personnel Manual" Agreement.

Article 10, Hours Of Work, in the ICEA Contract says in part:

Section 3. Work Breaks. Each employee shall be allowed to have two (2) work breaks during the work day. No more than one (1) work break may be taken before lunch. No more than one (1) work break may be taken after lunch on any one day. The duration of said break shall not exceed fifteen (15) minutes in length. A supervisor may require employees to take

their breaks at specific times. Each employee shall be allowed a one (1) hour lunch break between the hours of 11:30 a.m. and 1:30 p.m., unless another arrangement is agreed upon by the employee and the department head or the immediate supervisor if the department head is not available. Work breaks do not accumulate if not taken."

The work break requirement must be followed for both Mr. Kim and Ms. Hamlin on a daily basis.

A copy of page 23 of the ICEA Contract is attached as well as Mr. Easterday's previous e-mail.

See Attachment 10.

Judge Nettles-Nickerson was aware of the manner in which other judges conducted their courts, and she believed that Judge Collette was singling her out by enforcing standards in regards to her, when he was not enforcing those same standards as to the other Ingham County Circuit Court judges. Further, Jean Ann Hamlin never filed a grievance nor had she informed Judge Nettles-Nickerson of any problems relating to her breaks or lunch hour. In an attempt to resolve the issue, Judge Nettles-Nickerson requested that Judge Collette place the issue on the agenda for the next judges' meeting. In a further attempt to resolve the issue, Judge Nettles-Nickerson also requested a meeting with Ms. Hamlin, her union representative, and Judge Collette. Subsequent to those requests, Judge Nettles-Nickerson and Ms. Hamlin mutually decided that Ms. Hamlin should be transferred to a different courtroom. Ms. Hamlin turned on Judge Nettles-Nickerson and sided with persons who were attacking her, and Judge Nettles-Nickerson felt that it would be in everybody's best interests if Ms.

Hamlin was reassigned. On December 12, 2005, Judge Nettles-Nickerson received a memo from Judge Collette, in which he stated:

We have received a request from Ms. Hamlin to be transferred to a different courtroom. This is due in part to her concerns about the manner in which she has been treated by you.

Based upon the tone of the e-mail you sent last week, apparently you concur in her request for a reassignment.

I would like you to be aware that the transfer of a Court Reporter to a different courtroom is problematic. **Frankly, I believe that there will be a difficult time finding anyone else on staff that will work in your courtroom.**

Please put your request for the assignment of a different Court Reporter in writing and send it to Mr. Easterday.

In addition, please provide a written statement that you intend to abide by the various work rules and regulations of this Court under our Union agreements and just plan common sense.

See Attachment 11 (emphasis added). The reality of the situation at that point in time was that Judge Collette was literally “gunning” for Judge Nettles-Nickerson. Anything Judge Nettles-Nickerson did was being reported back to Judge Collette, and his hostility towards her fueled gossip circles throughout the court. Even the most minor things Judge Nettles-Nickerson did were being blown out of proportion in an attempt to discredit her.

Also on December 12, 2005, Judge Nettles-Nickerson received an email from David Easterday, 30th Circuit Court Administrator, regarding Ms. Hamlin trading positions with one of the other court reporters (see Attachment 12). Mr. Easterday sent out an email to the court reporters on December 13, 2005 (see Attachment 13), asking if any of them were willing to trade positions with Ms.

Hamlin. Theresa Abraham, a court reporter, requested a transfer to Judge Nettles-Nickerson's courtroom (with Judge Nettles-Nickerson's approval). However, Judge Nettles-Nickerson received an email from Mr. Hughes on December 15th, in which he stated as follows:

At your request, I called Chief Judge Collette regarding the assignment of a court reporter to your court. He has decided to assign [Dorothy Dungey] to your courtroom and Ms. Hamlin to Judge Lawless' courtroom, effective next Monday.

This has been done following a request for a transfer by Ms. Hamlin.

Other options were considered. This option was chosen by Judge Collette in the overall interest of the court.

He has the authority to make this decision regarding court reporters.

See Attachment 14. Also on December 15th, Judge Collette sent out a memo which indicated that Dorothy Dungey would be assigned to Judge Nettles-Nickerson (see Attachment 15). Ms. Dungey was the only African-American court reporter at 30th Circuit Court (see Attachment 16). It is very curious that Judge Collette elected to assign Ms. Dungey to Judge Nettles-Nickerson's courtroom. He was obviously considering issues regarding race at that time. Judge Collette unilaterally transferred Ms. Dungey to Judge Nettles-Nickerson's courtroom, despite the fact that Ms. Abraham requested that she be permitted to work for Judge Nettles-Nickerson.

Judge Nettles-Nickerson left a voicemail message for Mr. Easterday on the 15th, in which she expressed concern regarding the change in her court reporter. She requested that a meeting be scheduled to discuss the issue. Mr. Easterday sent

an email regarding the voicemail and Judge Nettles-Nickerson's request for a meeting to Judge Collette the following day, December 16, 2005 (see Attachment 17). Mr. Easterday indicated that he spoke with a member of Judge Nettles-Nickerson's staff and informed her that there would be no such meeting, pursuant to directions from Judge Collette.

On December 20, 2005, Ms. Abraham sent an email to Judge Nettles-Nickerson, in which she stated:

Although I wholeheartedly appreciate your offer and acceptance of having me as your full-time court reporter, **it has been made very clear to me that I am unable to transfer into your courtroom** from a part-time position. However, I appreciate your kind consideration.

See Attachment 18 (emphasis added). Judge Nettles-Nickerson responded to Ms. Abraham's email that same date (see Attachment 19). Also on December 20th, Judge Nettles-Nickerson sent an email to all of the 30th Circuit Court judges, Mr. Easterday, and Mr. Hughes, in which she stated:

Please be advised that this issue regarding the controlling policy with respect to the court reporters time has not been resolved. I respectfully asked to meet with my colleagues to discuss this issue with your insight and guidance before any changes occur.

See Attachment 20. Judge Nettles-Nickerson followed up that email with a second email, in which she stated:

I failed to include that the Association of Black Judges (Judge Hayes-Sipes) input/support will be requested, if necessary. **I prefer to deal with this internally but each judge should have control over their docket and trial schedule** in accordance with the SCAO and our policy and procedure, 03.03.01, effective 10-2000, (#2).

See Attachment 21 (emphasis added).

On December 21, 2005, Ms. Dungey emailed the 30th Circuit Court judges. In that email, Ms. Dungey stated that she did not **"feel that [she] should be compelled to be placed in an unpleasant and/or uneasy situation."** See Attachment 22 (emphasis in original). Judge Nettles-Nickerson responded to Ms. Dungey's email and stated:

I agree totally with [Ms. Dungey]. This situation was not the cause or made problematic by [Ms. Dungey], [Ms. Abraham], or myself. I have requested a meeting with the chief judge and my bench to understand who controls court reporters time. To date, at [sic] meeting has not been arrange [sic] and I am without a court reporter....

See Attachment 23.

Judge Collette was clearly forcing Ms. Dungey into a situation in which she and Judge Nettles-Nickerson both felt uncomfortable. Judge Nettles-Nickerson again requested a meeting with the judges on December 21, 2005 via an email sent to Judge Collette (see Attachment 24). She believed that she was being unduly regulated and micromanaged by Judge Collette. Judge James R. Giddings concurred in Judge Nettles-Nickerson's assessment that Judge Collette was singling her out, and on January 3, 2006, he wrote a memorandum to Judge Collette regarding the December 1st memo that was sent to Judge Nettles-Nickerson. Judge Giddings stated in part as follows:

Your memo raises a concern for me because it references procedures which apply presumably to all courts, including mine. **Obviously, any standard procedure which applies to one judge must apply with equal force to all judges.** As you correctly note, the union contract clearly provides for a one hour lunch break between the hours of 11:30 a.m. and 1:30 p.m.

As you know, for over 20 years my jury and non-jury trial schedule has run from 8:30 a.m. to, and some times beyond, 1:30 p.m., a schedule which is not unique. In the past, others including former Chief Judge Peter Houk followed a similar schedule.

It has been my position that this union contract may not control the hours during which judges operate their respective courts. On trial days, I do not allow the court reporter/recorder any lunch break between the hours of 11:30 and 1:30 p.m. Nor have any of my court reporters/recorders taken the position that they were entitled by virtue of the labor agreement to demand a one hour lunch period within that time frame. To do otherwise would interfere with my ability to transact the court's business, *i.e.*, if I have to stop my morning session for an hour to grant a recorder/reporter a one hour lunch break.

I have never formally agreed on any "arrangement" with my court reporter/recorder to insure his or her presence in court during the period of time that court was in session. When I interview a new court reporter/recorder, I make clear what my schedule is. I assume that if they take the job they are willing to adhere to my trial schedule. Is that an "arrangement"?

* * *

Since I do not now have and never have had any "arrangement" with my court reporter/recorder regarding work breaks, your memo raises two questions:

- 1) Are judges who work a non-traditional schedule, *i.e.* 8:30 a.m. to 1:30 p.m., under some obligation, at least on trial days, to give court reporters/recorders a one hour lunch break between 11:30 a.m. and 1:30 p.m?
- 2) What happens if a court reporter/recorder insists that they are entitled to a lunch hour in those hours after having worked on a different schedule for months or years without objection? Are judges and other court reporters/recorders expected to give way to the unilateral objections of one court reporter?

I suggest it is unfair and inefficient to expect judges to either adjust courtroom schedules based on the complaints of a disgruntled court reporter or be forced to accept a different court reporter (we might not have hired at all) simply because the incumbent reporter is no longer willing to follow the judge's schedule.

To avoid future misunderstandings, I request that this matter be promptly discussed and resolved by you and our colleagues in light of the current and historical practice, of the policy/procedure adopted by the court five years ago and of the current union contract. Thank you.

See Attachment 25 (emphasis added).

On January 6, 2006, Judge Collette responded to Judge Giddings' memorandum by way of a memorandum, in which he stated as follows:

I have just been given a copy of the memo that you sent out concerning court hours of operation. In your memo, you raise a number of points that you and I have discussed in two telephone discussions that total well over an hour. In addition, you and I have had a face-to-face meeting that lasted at least two hours where I told you my views on the points you raise in your memo. I am unclear exactly what else I could say to you about these concerns other than to reiterate what I have told you in the past....

* * *

On a different note, the issue you raise in your memo seems to imply that I and the other judges should resolve this issue in some fashion. I would respectfully point out that we have no power to override the wage and hour and other labor laws that have been passed by our legislature, as well as the agreed to labor agreements we entered into with our employees. If, of course, my view on the law is wrong, I would be happy to see some citation on that.

Lastly, I note that you have chosen to share your memo to me with all of the other judges. I am sending this response only to you. But, once again, let me say as I have said several times before, I am not interested in discussing this employee issue with you any further.

See Attachment 26.

Judge Giddings obviously believed that Judge Collette's treatment of Judge Nettles-Nickerson appeared to be different than that applied to the other judges, all of whom are white. Judge Giddings is a white male. Judge Nettles-Nickerson

is African-American female. Both were duly elected by the citizens of Ingham County. Judge Giddings was not required to change his courtroom procedures. There was no justification for Judge Collette's disparate treatment of Judge Nettles-Nickerson and Judge Giddings.

- 25) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our response to paragraph 24.
- 26) Judge Nettles-Nickerson denies this paragraph. She never directed Ms. Hamlin to provide false information to anyone, including Judge Collette. Courtroom records would clearly show when breaks or lunch recesses were being taken.² The only point Judge Nettles-Nickerson ever stressed to her court reporter was that if she had problems, Judge Nettles-Nickerson would have preferred that they be discussed with her (Judge Nettles-Nickerson) first, before Ms. Hamlin got Judge Collette involved.
- 27) Judge Nettles-Nickerson denies this paragraph in the form stated. She admits that Ms. Hamlin sent a memo to Judge Collette (see Attachment 27). Judge Nettles-Nickerson denies that she attempted to get Ms. Hamlin to state any falsehoods in her letter.
- 28) Judge Nettles-Nickerson denies this paragraph in the form stated. Judge Nettles-Nickerson did ask Ms. Hamlin to provide Judge Collette with more detail, spelling out the full scope of the issue. After Judge Nettles-Nickerson made that

² We also incorporate by reference Footnote 1 at page 5.

request, Ms. Hamlin provided Judge Collette with a second, more detailed memo (see Attachment 28).

- 29) Judge Nettles-Nickerson denies this paragraph in the form stated. Although Judge Nettles-Nickerson did not agree with all of the statements contained in Ms. Hamlin's second letter to Judge Collette, she denies that such was the catalyst for Ms. Hamlin's employment ceasing. Ms. Hamlin transferred to another judge at 30th Circuit Court. We also incorporate by reference our response to paragraph 24.
- 30) Judge Nettles-Nickerson denies this paragraph in the form stated. While it is true that Ms. Hamlin is a long-time court reporter who transferred to another judge at 30th Circuit Court, Judge Nettles-Nickerson did not consider her work record to be "exemplary" during the period prior to the transfer. Ms. Hamlin was playing "court reporter politics" and attempting to use the situation that existed between Judge Collette and Judge Nettles-Nickerson to her own advantage.
- 31) Judge Nettles-Nickerson denies this paragraph as being untrue. Judge Nettles-Nickerson denies that she asked Ms. Hamlin to lie for her. Judge Nettles-Nickerson also denies that she had no issues with Ms. Hamlin prior to the referenced situation.

D. False accusations that Judge William Collette had tried to develop an improper social relationship.

- 32) Judge Nettles-Nickerson denies this paragraph as being untrue. She never informed Daniel Nickerson, her former husband, that Judge Collette was "coming

on to" her. Mr. Nickerson was extremely jealous throughout his 19-year marriage to Judge Nettles-Nickerson, and frequently expressed concerns that men were "coming on to" her. Furthermore, Judge Nettles-Nickerson went through a very acrimonious break-up with Mr. Nickerson and, accordingly, his credibility is suspect. Judge Nettles-Nickerson told Mr. Nickerson that Judge Collette had suggested that they meet to discuss matters. Mr. Nickerson's jealousy and imagination took over from that point on.

- 33) Judge Nettles-Nickerson denies this paragraph in the form stated. Based upon information and belief, Mr. Nickerson confronted Judge Collette in early 2005 with these false allegations. Although Judge Nettles-Nickerson was not present, she was informed that Mr. Nickerson confronted Judge Collette relative to inappropriate conduct and harassment. Judge Nettles-Nickerson is unaware of Judge Collette's response to her former husband. Even more importantly, Judge Nettles-Nickerson is not responsible for her former husband's ranting. The Commission's attempt to hold Judge Nettles-Nickerson responsible for her former husband's conduct must be rejected by the Master.
- 34) Paragraphs 34(a)-(h) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

E. Transfer of court reporter

- 35) Judge Nettles-Nickerson admits this paragraph.

- 36) Judge Nettles-Nickerson denies this paragraph in the form stated. During the press conference, Judge Nettles-Nickerson did express her belief that Judge Collette, Mr. Easterday and Mr. Hughes had advocated the termination/transfer of her court reporter, Dorothy Dungey. Judge Nettles-Nickerson truly believes that the three men wanted Ms. Dungey fired, because all three men have expressed that desire to Judge Nettles-Nickerson. However, even if Judge Nettles-Nickerson's belief was incorrect and the statement was inaccurate, expressing an incorrect belief is not judicial misconduct.
- 37) Judge Nettles-Nickerson denies this paragraph in the form stated. She truly believed that Judge Collette and Mr. Hughes had filed grievances against her with the Commission, therefore the statements were not inaccurate in her mind. Even more importantly, Judge Nettles-Nickerson believes to this day that both of those men have been instrumental in terms of funneling information to the Commission. In fact, the undersigned as obtained an affidavit from attorney Traci M. Kornak, who took concerns regarding 30th Circuit Court procedures to the Deputy Court Administrator, Sally Holweda. Ms. Kornak was literally encouraged by Judge Collette to file a grievance against Judge Nettles-Nickerson (see Attachment 29).
- 38) Paragraphs 38(a)-(j) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

**COUNT III: COERCING OR PRESSURING COURT EMPLOYEES
INTO LISTING CASES ON THE NO PROGRESS DOCKET.**

- 39) Judge Nettles-Nickerson admits the first sentence of this paragraph but denies the latter portion. Judge Nettles-Nickerson admits the factual statements regarding programs at 30th Circuit Court that monitor case progress. Judge Nettles-Nickerson denies that she “repeatedly pressured or coerced” court employees to put cases on the No Progress Docket if such cases did not qualify for that docket.
- 40) Paragraphs 40(a)-(l) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

**COUNT IV: EXCESSIVE ABSENCES,
BELATED COMMENCEMENT OF PROCEEDINGS,
UNTIMELY ADJOURNMENTS AND IMPROPER DOCKET MANAGEMENT.**

- 41) Judge Nettles-Nickerson denies this paragraph as untrue. As a circuit court judge, Judge Nettles-Nickerson is entitled to vacation days, sick days, and personal days, just as other judges are. MCR 8.110(D)(3)-(6). Judge Nettles-Nickerson did not exceed her allotted absences. Due to Judge Nettles-Nickerson’s personal situation (including her divorce), it is possible that certain matters may have been cancelled on short but reasonable notice. Judge Nettles-Nickerson never intentionally and/or unreasonably cancelled matters solely for her own personal convenience and in a manner that seriously inconvenienced counsel, parties or witnesses.

Traditionally within 30th Circuit Court, the day-to-day scheduling of trials and hearings within a judge's courtroom is left to the discretion of the judge. Judge Nettles-Nickerson always attempted to run her docket and courtroom in a manner in which all of the cases on her docket are processed in a timely fashion. Her Statement of Matters Undecided and Annual Judicial Absences Reports indicate that Judge Nettles-Nickerson's docket is managed in a timely fashion and that she has never exceeded her allowed absences. It also should be noted that based upon Judge Nettles-Nickerson's best recollection, at no time during the twelve years that she served on the 54-A District Court did she receive any complaints from the chief judge, the other district court judges, attorneys, litigants, SCAO or the Commission relative to the management of her docket. In fact, Judge Nettles-Nickerson was openly supported by numerous Lansing-area judges and attorneys when she ran for a seat on the circuit court bench (see Attachment 30).

- a. Judge Nettles-Nickerson can neither admit nor deny this paragraph, as she has no recollection of any such event. She has not been provided with a date, names of the detectives, or subject matter of the subpoenas. There is also no indication which member of Judge Nettles-Nickerson's staff contacted her regarding his event.

Judge Nettles-Nickerson was assigned for a one-year period (beginning in January 2005) to be the first judge to be approached

in the event that law enforcement officers needed a subpoena. The common practice in 30th Circuit Court, however, is that if the assigned judge is unavailable, officers may freely approach any of the other circuit court judges to have subpoenas signed. In the event a judge is unavailable, it is the responsibility of the court staff to so advise the officers. It is also common practice for officers to leave subpoenas at court and return at a later time to pick them up. Significantly, there is no allegation that the subpoenas in question were time-sensitive.

- b. Judge Nettles-Nickerson admits this paragraph in part. While conducting a bench trial, Judge Nettles-Nickerson adjourned the trial for lunch from 12:00 noon to 1:30 p.m. During the lunch break, Judge Nettles-Nickerson received a telephone call from her niece, who was driving from Detroit with two young children to visit family. Her niece's vehicle slid off of the highway outside of Howell and she called Judge Nettles-Nickerson for assistance. Judge Nettles-Nickerson ascertained that given the short distance from the courthouse to the accident scene, she would have sufficient time to pick her niece and the children up and make it back to court. Judge Nettles-Nickerson made every attempt to drive them back to Lansing as quickly as possible. However, due to poor weather conditions, there were several accidents and traffic was quite congested. As soon as Judge Nettles-Nickerson

realized she would be unable to return to the courthouse in a reasonable amount of time, she called her judicial assistant and had her advise all parties that the afternoon session had to be adjourned and would continue the following day. Judge Nettles-Nickerson thought that excusing the parties for the day made more sense than having them wait for her return, which she could not accurately estimate due to the traffic problems.

c. Judge Nettles-Nickerson can neither admit nor deny this paragraph, as she has no recollection of any such event. No date has been provided, nor have the individuals who were present when the incident allegedly occurred been identified. If a date is later provided to Judge Nettles-Nickerson's counsel, she will answer the allegation further.

d. Judge Nettles-Nickerson denies this paragraph. Based upon information and belief, the *Jones* trial was not scheduled to commence on January 30, 2006. In 30th Circuit Court, there is a procedure for the scheduling of criminal jury trials. The trial date is selected and noticed by the assistant prosecutor, after the prosecutor checks the availability of the date with the judge's judicial assistant. If a jury trial is going to be held, it is the responsibility of the judicial assistant to order a jury. Both of those functions occur without the involvement of the judge.

Although the *Jones* case was noticed for trial on three separate dates, December 15, 2005; January 30, 2006; and June 19, 2006 (see Attachments 31, 32, 33); no jury was requested for January 30, 2006 (see Attachment 34). Further, on June 29, 2006 the defendant plead guilty to one count in exchange for a dismissal of another count (see Attachment 35). A review of Attachment 34 also indicates that no jury was requested for January 31, 2006 either.

- e. Judge Nettles-Nickerson denies this paragraph. On December 9, 2005, Judge Nettles-Nickerson was present in court on or before 8:00 a.m. On that date, the Lansing area was experiencing severe weather and two jurors were unavailable due to the weather. At the request of the defense attorney and prosecutor, fourteen jurors had originally been seated for the *Christian-Bates* trial. Because Judge Nettles-Nickerson did not want to commence the trial with any of the fourteen jurors being unavailable, she cancelled the trial for that day.

To the best of Judge Nettles-Nickerson's recollection, her children were with a babysitter on that day. However, if her children were present in her chambers later that day, or any other day, such is not judicial misconduct nor is it an ethical violation.

- f. Judge Nettles-Nickerson denies this paragraph in the form stated.
Although a date has been provided, no information has been given regarding the case name or any remaining matters that Judge Nettles-Nickerson may have had on her docket on that day. Although a motion hearing may have commenced 45-minutes "late," there is a very good possibility that Judge Nettles-Nickerson was in her chambers working on unrelated matters.
- g. Judge Nettles-Nickerson denies this paragraph in the form stated.
We incorporate by reference our response to paragraph 41(f).
- h. Judge Nettles-Nickerson denies this paragraph in the form stated.
We incorporate by reference our response to paragraph 41(f).
- i. Judge Nettles-Nickerson denies this paragraph in the form stated.
We incorporate by reference our response to paragraph 41(f).
- j. Judge Nettles-Nickerson denies this paragraph in the form stated.
We incorporate by reference our response to paragraph 41(f).
- k. Judge Nettles-Nickerson denies this paragraph in the form stated.
We incorporate by reference our response to paragraph 41(f).
- l. Judge Nettles-Nickerson denies this paragraph in the form stated.
We incorporate by reference our response to paragraph 41(f).

- 42) Paragraphs 42(a)-(k) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT V: IMPROPER *EX PARTE* COMMUNICATIONS.

- 43) Judge Nettles-Nickerson admits this paragraph. The case records reflect that the summary disposition motion filed by the defense attorney was cancelled by that attorney on February 9, 2005 and never reset.
- 44) Judge Nettles-Nickerson denies this paragraph as being untrue. Based upon her best recollection, Judge Nettles-Nickerson did not inform the defense attorney that he would have to go to trial immediately.
- 45) Judge Nettles-Nickerson denies this paragraph as being untrue. She does not recall contacting the defense attorney, nor does she recall inquiring as to the authority for taking an appeal.
- 46) Judge Nettles-Nickerson denies this paragraph as being untrue. She never initiated *ex parte* conversations with Mr. Otis. It has always been Judge Nettles-Nickerson's practice, when contact with an attorney is necessary, to have the contact made by her staff.
- a. Judge Nettles-Nickerson denies this paragraph as being untrue. She does not recall having any such conversation with Mr. Otis. According to her best recollection, Mr. Otis was not even the attorney of record on the *Gage* case. Judge Nettles-Nickerson

does not recall Mr. Otis appearing before her when she was a judge in district court. She does not know Mr. Otis personally, not has she had any extensive contact with him professionally. There would be no reason for Judge Nettles-Nickerson to contact Mr. Otis for his opinion of her conduct.

- b. Judge Nettles-Nickerson denies this paragraph as being untrue. She does not recall having any such conversation with Mr. Otis. However, even if such a conversation did take place, it does not appear that the merits of the case were discussed. It appears that procedural matters were allegedly discussed, which would not violate applicable ethical restraints
- c. Judge Nettles-Nickerson denies this paragraph as being untrue. She does not recall having any such conversation with Mr. Otis.³ Inquiries regarding filing issues are generally directed to and responded to by the clerk's office before the court's file is sent to the judge's office. In the event a motion for summary disposition makes its way through the clerk's office without a proof of service, and Judge Nettles-Nickerson noticed that fact, it is her practice to have her clerk or assistant make all inquiries regarding the document. We also incorporate by reference Judge Nettles-Nickerson's response to paragraph 46(b).

³ We also incorporate by reference Footnote 1 at page 5.

47) Judge Nettles-Nickerson denies this paragraph as being untrue. Due to the age of this case, it is difficult to recall the specific settlement discussions, however, to the best of Judge Nettles-Nickerson's recollection, she does recall speaking with the claims adjuster during settlement negotiations in order to determine if the case could be settled. Any contact with that claims adjuster would have only occurred after obtaining counsels' consent to speak with the adjuster. At no time did Judge Nettles-Nickerson make an offer of settlement on behalf of a party. Rather, in the course of settlement negotiations, it is Judge Nettles-Nickerson's practice to indicate what she believes a defendant may consider paying. In the event Judge Nettles-Nickerson obtains a commitment to pay a set amount from a defendant, she then attempts to obtain commitment from the plaintiff. It is significant to note that a settlement was reached in the *Mahoney* case, and the settlement was placed on the record. At no time did the parties make any objections on the record, nor did they ever allege any improprieties relative to Judge Nettles-Nickerson's efforts to facilitate the settlement. The Commission and Judge Nettles-Nickerson's detractors are obviously fly-specking her lengthy service as a judge in order to come up with allegations which cannot be defended due to their age and staleness.

48) Judge Nettles-Nickerson denies this paragraph as untrue. We incorporate by reference our response to paragraph 47.

49) Judge Nettles-Nickerson admits this paragraph.

50) Judge Nettles-Nickerson admits this paragraph.

- 51) Judge Nettles-Nickerson admits this paragraph. The case was put on the No Progress Docket pursuant to court rule and applicable circuit court procedures.
- 52) Judge Nettles-Nickerson denies this paragraph in the form stated. After she put the case on the No Progress Docket, Mark Meadows called Judge Nettles-Nickerson's office and left a voicemail requesting that the case be removed from the No Progress Docket. Mr. Meadows informed Judge Nettles-Nickerson's law clerk that the case could not be dismissed for no progress, even though nothing had occurred after the case was filed, because the circuit court action was merely an action to obtain subpoenas to support an administrative proceeding before the Bureau of Licensing and Regulation. Judge Nettles-Nickerson's law clerk requested that Mr. Meadows follow the court rule and file an affidavit to save the case and cite legal authority for his position. On March 9, 2005, the case was dismissed, as no action was taken to save the case. On March 11, 2005, *after* the case was dismissed, Mr. Meadows called Judge Nettles-Nickerson and she returned his call. At that time, Judge Nettles-Nickerson spoke with Mr. Meadows regarding the administrative purpose of the No Progress Docket and explained to him why his case had been dismissed. The merits of the matter were not discussed, nor were any substantive matters discussed or argued. This conversation was consistent with Judge Nettles-Nickerson's ethical obligation as set forth in Michigan Code of Judicial Conduct (MCJC) 3(A)(4)(a).
- 53) Judge Nettles-Nickerson denies this paragraph as being untrue. We incorporate by reference our response to paragraph 52.

- 54) Judge Nettles-Nickerson denies this paragraph as being untrue. The matter did meet criteria for no progress dismissal in Judge Nettles-Nickerson's opinion.
- 55) Paragraphs 55(a)-(m) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

**COUNT VI: ALLOWING SOCIAL OR OTHER RELATIONSHIPS TO INFLUENCE
RELEASE OF A CRIMINAL DEFENDANT FROM PROBATION.**

- 56) Judge Nettles-Nickerson admits this paragraph in part and denies it in part. Judge Nettles-Nickerson admits the factual statements regarding Gwen Dupard's position at 30th Circuit Court. Judge Nettles-Nickerson denies that Ms. Dupard was a friend or social acquaintance. Ms. Dupard was an employee of 30th Circuit Court whom Judge Nettles-Nickerson respected.
- 57) Judge Nettles-Nickerson admits this paragraph.
- 58) Judge Nettles-Nickerson admits this paragraph in part and denies it in part. At the time, she was unaware of any relationship between Ms. Dupard and Deshawn Anderson. Judge Nettles-Nickerson has since learned of a relationship between Ms. Dupard and Mr. Anderson, and has further learned that Judge Collette, Mr. Easterday, and individuals in the probation department were all aware of the relationship. However, Judge Collette instructed Probation Supervisor Kit San Grotelueschen, Probation Officer Jason Gordon, and Mr. Easterday not to disclose that information to Judge Nettles-Nickerson (see Attachment 36).

59) Judge Nettles-Nickerson admits this paragraph. As a result of Mr. Anderson's probation violations, at a violation hearing, Judge Nettles-Nickerson found him guilty of violating his probation and extended his probation for one year. As an incentive to Mr. Anderson to comply with the terms of his probation and to successfully complete his probation, Judge Nettles-Nickerson indicated to him at the time of his sentencing that if he complied with the terms, his extended one-year probation might be terminated early. The manner in which Judge Nettles-Nickerson handled Mr. Anderson's case was common practice in terms of how she handled such matters. Mr. Gordon was present and agreed with her decision. In fact, it was pursuant to Mr. Gordon's request that Judge Nettles-Nickerson extended Mr. Anderson's probation for one year. The transcript reflects the following exchange:

THE COURT: I find the plea to be knowingly, understandingly, voluntarily, accurately made, free of duress, supported by a preponderance of the evidence. I accept the plea. Recommendation?

MR. GORDON: I've given him numerous chances to get on track and get things straight. His drug test from yesterday was negative. So what I'm recommending is an extension of probation, that he enroll in outpatient treatment, drop three times per week for 60 days and randomly thereafter.

THE COURT: Extend probation for how long?

MR. GORDON: A year.

See Attachment 37 (an unmarked copy of the transcript could not be obtained prior to this submission).

- 60) Judge Nettles-Nickerson denies this paragraph as being untrue. Ms. Dupard did not visit Judge Nettles-Nickerson on several occasions, nor did Judge Nettles-Nickerson have any closed door meetings relative to Mr. Anderson's case.
- 61) Judge Nettles-Nickerson denies this paragraph as being untrue. She does not recall providing any written documentation directing that Mr. Anderson be discharged from probation as soon as possible. Further, at the time Mr. Anderson was discharged, Judge Nettles-Nickerson would have only done so if she believed that it was appropriate to take such action.
- 62) Judge Nettles-Nickerson is without sufficient knowledge to admit or deny this paragraph. She has no knowledge of any communications between Mr. Gordon and Ms. Morgan.⁴
- 63) Judge Nettles-Nickerson is without sufficient knowledge to admit or deny whether Mr. Gordon received any communication from Ms. Morgan.⁵
- 64) Judge Nettles-Nickerson admits this paragraph. Mr. Anderson had completed the majority of his one-year extended probation. Mr. Gordon did not inform Judge Nettles-Nickerson that Mr. Anderson had violated any terms of his probation. Mr. Anderson's former employer contacted the court and wanted to rehire Mr. Anderson. Mr. Gordon was provided with a copy of Mr. Anderson's employment letter (see Attachment 38), and was further notified of Judge Nettles-Nickerson's intent to terminate the extended probation.

⁴ We also incorporate by reference Footnote 1 at page 5.

⁵ We also incorporate by reference Footnote 1 at page 5.

65) Judge Nettles-Nickerson admits this paragraph. Judge Collette discharged Ms. Dupard without discussing the incident with Judge Nettles-Nickerson. Judge Collette later advised Judge Nettles-Nickerson that the reason for Ms. Dupard's discharge was because Ms. Dupard allegedly influenced Judge Nettles-Nickerson's decision to terminate Mr. Anderson's probation. Judge Nettles-Nickerson attempted to speak with Judge Collette regarding Ms. Dupard's termination several times, in an effort to inform him that her decision to terminate Mr. Anderson's probation was not influenced or requested by Ms. Dupard. Judge Nettles-Nickerson then learned, from John Ferry (former State Court Administrator), that Judge Collette and Mr. Hughes had requested that the Attorney General's office and the Ingham County Prosecutor's office investigate Judge Nettles-Nickerson's and Ms. Dupard's actions as they related to Mr. Anderson's case. Judge Nettles-Nickerson was understandably angry that an investigation had occurred without her knowledge or the opportunity to participate or respond. Judge Nettles-Nickerson requested a copy of all information concerning the alleged improper action. Her concerns regarding the investigation are set forth in an email to Judge Collette, Mr. Easterday, Carl Gromek (State Court Administrator), and Mr. Hughes dated January 27, 2005 (see Attachment 39).

The issues surrounding Ms. Dupard and Mr. Anderson's matter were thoroughly investigated by Judge Collette, Mr. Hughes, Mr. Ferry, the Attorney General's Office, and the Michigan State Police. The investigation concluded that no impropriety had occurred and the investigation was closed. The Commission is

dredging up this three-year old allegation at this juncture as part of its witch hunt against Judge Nettles-Nickerson.

- 66) Judge Nettles-Nickerson admits this paragraph. She did support Ms. Dupard in her desire to be reinstated because no wrongdoing had occurred. Judge Nettles-Nickerson accepted Judge Collette's decision not to reinstate Ms. Dupard.
- 67) Paragraphs 67(a)-(m) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

**COUNT VII: ATTEMPTED RETALIATION AGAINST
THE PROBATION DEPARTMENT AND CERTAIN EMPLOYEES
AS A RESULT OF THE DESHAWN ANDERSON INCIDENT.**

- 68) Judge Nettles-Nickerson denies this paragraph. She does not recall having such a discussion with Ms. San Grotelueschen regarding Mr. Anderson's case.
- 69) Judge Nettles-Nickerson denies this paragraph. We incorporate by reference our response to paragraph 68.
- 70) Judge Nettles-Nickerson is without sufficient knowledge to admit or deny this paragraph. She is unaware of any conversations Ms. Morgan had with Mr. Gordon or Ms. San Grotelueschen.
- 71) Judge Nettles-Nickerson denies this paragraph as being untrue. We incorporate by reference our response to paragraph 68.

- 72) Judge Nettles-Nickerson denies this paragraph as being untrue. We incorporate by reference our response to paragraph 68.
- 73) Judge Nettles-Nickerson has no recollection of this alleged event. No date has been provided and the name of the “unrelated matter” has not been provided. Further, if Judge Nettles-Nickerson’s comments were in regards to an “unrelated matter,” we deny that such comments are relevant to this proceeding. We also incorporate by reference our response to paragraph 68.
- 74) Judge Nettles-Nickerson denies this paragraph as being untrue. We incorporate by reference our response to paragraph 68.
- 75) Judge Nettles-Nickerson denies this paragraph. The purpose of the meeting in question was to ensure that if any issue regarding Judge Nettles-Nickerson’s cases arose in the future, she be informed of such. She expressed her opinion to Charles Sinclair that she should have been advised of the fact that there was a relationship between Ms. Dupard and Mr. Anderson and of the fact that the 30th Circuit Court was conducting an investigation. As a result of that meeting, Mr. Sinclair contacted Norene Sawatzki regarding further investigation of the matter. Ms. San Grotelueschen was required to prepare a statement indicating that she had been instructed by Judge Collette not to speak with Judge Nettles-Nickerson about the matter (see Attachment 36, previously appended). Shortly after the investigation concluded, Ms. San Grotelueschen took a voluntary retirement.

- 76) Paragraphs 76(a)-(m) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT VIII: IMPROPER TERMINATION OF JUDICIAL ASSISTANT ANGELA MORGAN AND COVER-UP OF REASONS FOR DISMISSAL.

- 77) Judge Nettles-Nickerson denies this paragraph as being untrue. Ms. Morgan and Judge Nettles-Nickerson mutually agreed that Ms. Morgan should no longer work in Judge Nettles-Nickerson's court. We also incorporate by reference our response to paragraph 16.
- 78) Paragraphs 78(a)-(k) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT IX: INCIDENT AT SERVICE STATION.

- 79) Judge Nettles-Nickerson admits this paragraph.
- 80) Judge Nettles-Nickerson denies this paragraph in the form stated. Due to the fact that Judge Nettles-Nickerson's gas gauge did not reflect a significant addition of gasoline, Judge Nettles-Nickerson went into the gas station and complained to Richard Keusch, the owner, that she felt she had not received the amount of gasoline registered on the pump's meter. She indicated to Mr. Keusch that if, in fact, such had occurred, the result would be cheating the public. She further indicated that she did not receive the gas and she should not have to pay for the gas. Mr. Keusch became angry, and a somewhat heated discussion

occurred. Judge Nettles-Nickerson is unaware as to whether other customers were present during her discussion with Mr. Keusch.

- 81) Judge Nettles-Nickerson admits this paragraph. Despite the fact that the pump reflected that Mr. Keusch had been able to pump approximately \$3.00 more into Judge Nettles-Nickerson's vehicle, her gas gauge did not reflect any addition to the gas tank.
- 82) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our response to paragraph 81.
- 83) Judge Nettles-Nickerson admits this paragraph.
- 84) Judge Nettles-Nickerson denies this paragraph in the form stated. There was a discussion as to whether Judge Nettles-Nickerson should have to pay for the additional \$3.00 worth of gasoline that Mr. Keusch pumped into her vehicle. Mr. Keusch indicated that he was a businessman and \$3.00 was not going to make him or break him. The parties agreed to disagree, and the amount was not paid at that time. The parties exchanged business cards so that Mr. Keusch could make future contact with Judge Nettles-Nickerson if he chose to do so.
- 85) Judge Nettles-Nickerson denies this paragraph as being untrue. Judge Nettles-Nickerson does not recall indicating to Mr. Keusch that she would "see him court." We also incorporate by reference our response to paragraph 84.

- 86) Judge Nettles-Nickerson is without sufficient knowledge to admit or deny this paragraph. She is unaware as to whether Mr. Keusch filed a police report with the City of Portland, as no representative from that agency ever contacted her.
- 87) Judge Nettles-Nickerson admits this paragraph. Based upon information and belief, one of Judge Nettles-Nickerson's detractors immediately leaked the story to the press. Judge Nettles-Nickerson acknowledges that the Sentinel-Standard printed a newspaper article relative to the incident.

Judge Nettles-Nickerson contacted Mr. Keusch and informed him that she had her vehicle examined and that the gas gauge was, in fact, broken. Judge Nettles-Nickerson apologized for her accusations regarding the gas pump and also indicated to Mr. Keusch that he could debit her card for \$3.00 if he wished to do so. Mr. Keusch again indicated that \$3.00 wouldn't make or break his business and that he was not going to charge her the additional \$3.00.

Judge Nettles-Nickerson also wanted to discuss the inaccuracies contained in the Sentinel-Standard newspaper with Mr. Keusch. The article incorrectly implied that Judge Nettles-Nickerson had stolen gas, the police had investigated the matter, and as a result of the investigation the \$3.00 had ultimately been paid. To the best of Judge Nettles-Nickerson's knowledge none of those things were true. She asked Mr. Keusch whether he had filed a police report. Mr. Keusch indicated that although individuals had encouraged him to file a report with the police, he had not done so. Mr. Keusch informed Judge Nettles-Nickerson that she was welcome to return to his business at any time. To this

date, Judge Nettles-Nickerson does not know whether an investigation was conducted or a report prepared. The article was inaccurate, was not instigated by either of the parties involved, and was apparently sensationalized in its presentation. (In addition to discussing the alleged police investigation, the article made reference to the ongoing problems between Judge Collette and Judge Nettles-Nickerson.) Judge Collette is a very powerful man and Judge Nettles-Nickerson believes that there is a very real possibility that Judge Collette played a role in the gas station story being sensationalized.

- 88) Paragraphs 88(a)-(h) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

COUNT IX: RACE AND RACISM.

- 89) Judge Nettles-Nickerson denies this paragraph as being untrue. Judge Nettles-Nickerson only brought up race discrimination when she felt that she was truly being discriminated against.

A. The memo from the Chief Judge.

- 90) Judge Nettles-Nickerson denies this paragraph in the form stated. Judge Collette did not "send" the March 9, 2004 memo to Judge Nettles-Nickerson. On March 9, 2004 Judge Nettles-Nickerson was on medical leave for one week to complete a comprehensive medical examination to determine a course of proactive treatment for Lupus. (She had been diagnosed with systemic Lupus twenty-five years earlier.) Upon her return to the court, Judge Collette's memo

was left on her chair where it could be read by Judge Nettles-Nickerson's entire staff. The memo was overly broad and generally criticized her work habits without specificity (see Attachment 40). Judge Nettles-Nickerson was unable to effectively respond to the memo due to the fact that it did not contain specific allegations. Judge Nettles-Nickerson later learned that Judge Collette had sent a blind copy of the memo to Mr. Hughes. We also incorporate by reference our response to paragraph 87.

- 91) Judge Nettles-Nickerson admits this allegation. It should be noted that Mr. Hughes scheduled the meeting for 4:30 p.m. at his office. Judge Nettles-Nickerson requested an earlier time or a different date due to a prior scheduling conflict. Her request to change the date was denied, and she was specifically informed that the date would not be changed because it was satisfactory to Mr. Hughes and Judge Collette. Due to the fact that the memo was highly offensive to Judge Nettles-Nickerson, her now former husband, Mr. Nickerson, accompanied her to the meeting. He waited in the lobby during the meeting.
- 92) Judge Nettles-Nickerson denies this paragraph in the form stated. During the March 15, 2004 meeting Judge Nettles-Nickerson requested that she be provided with the names of any individuals, including members of her staff, who had made complaints concerning her alleged absences and "heavy-handed activities in settlement negotiations." She was merely requesting that she be provided with the specific nature of the charges that had been made and the sources of those charges. At the meeting, Judge Collette and Mr. Hughes

refused to provide Judge Nettles-Nickerson with any detail. Accordingly, on March 18, 2004 she followed up in writing with Judge Collette relative to what had transpired at the meeting. She sent a carbon copy of that memo to Mr. Hughes. In that memo, Judge Nettles-Nickerson expressed her disappointment at the treatment she received from Judge Collette and Mr. Hughes at the meeting. She also questioned why she, as an African-American judge was being treated differently than other judges on the 30th Circuit Court bench, some of whom had long-standing friendships with Judge Collette (see Attachment 41). Mr. Hughes responded to Judge Nettles-Nickerson's March 18th memo on March 24, 2004 (see Attachment 42). Judge Nettles-Nickerson responded on March 26, 2004 (see Attachment 43).

Judge Nettles-Nickerson admits that she did terminate her law clerk, Anne Marie Ward-Fuchs. The termination, however, was completely unrelated to Judge Nettles-Nickerson's meeting with Judge Collette and Mr. Hughes. Ms. Ward-Fuchs had repeatedly complained to Judge Nettles-Nickerson that her docket was too much work and was different from the workload that she (Ms. Ward-Fuchs) had previously been used to when working under Judge Peter Houk. Ms. Ward-Fuchs also was terminated due to the fact that numerous attorneys had expressed complaints to Judge Nettles-Nickerson's judicial assistant that Ms. Ward-Fuchs had a curt attitude with them regarding the timeliness of briefs, scheduling notices, conflicts, etc. Ms. Ward-Fuchs exhibited a poor ability to complete her work in a professional manner, provided incomplete analysis of summary motions, and was repeatedly absent. Additionally, Ms. Ward-Fuchs

created a bad situation when she withheld information from local attorneys concerning a potential scheduling conflict relative to a settlement conference.

Judge Nettles-Nickerson denies that she took any steps to have Judge Brown fire Ms. Ward-Fuchs. At a later point in time, Judge Nettles-Nickerson agreed to change Ms. Ward-Fuchs's termination to a voluntary dismissal in order to assist Ms. Ward-Fuchs in obtaining another position.

93) Judge Nettles-Nickerson denies this paragraph as being untrue. She does not recall making the statements attributed to her. However, if similar comments were in fact made by her, she was within her rights to make such assertions. Judge Nettles-Nickerson admits that she did express to Judge Collette and Mr. Hughes that she felt she was being picked on and treated differently because of her race, *i.e.* she is African-American and they are white.

94) Paragraphs 94(a)-(m) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

B. Spurious complaint with the Michigan Civil Rights Commission.

95) Judge Nettles-Nickerson admits this paragraph. From the start of her tenure on the 30th Circuit Court bench, she has been subjected to extreme scrutiny and disparate regulation by Judge Collette. The only apparent difference between Judge Nettles-Nickerson and her colleagues is the fact that she is African-American. She believed at the time and still believes today that her race was a

motivating factor in the disparate treatment. Judge Nettles-Nickerson repeatedly requested that Judge Collette meet with her and the other judges to resolve a series of procedural issues, including but not limited to her trial schedule and her court reporter. Judge Collette refused to meet with Judge Nettles-Nickerson and the other judges to discuss these issues. Based upon that refusal, with no other place to turn, in December 2005 Judge Nettles-Nickerson met with the Michigan Department of Civil Rights (MDCR) to discuss the potential merits of filing a complaint against Judge Collette. On January 18, 2006 she filed a complaint with the MDCR (see Attachment 44). It should be noted that pursuant to the Elliott-Larsen Civil Rights act, it is a violation of law for any individual or organization to retaliate against Judge Nettles-Nickerson for exercising her right to file such a complaint. MCL § 37.2101 et seq. For the Commission to allege that the filing of a civil rights complaint is judicial misconduct or that such an action is racially inappropriate amounts to retaliation by the Commission. Even the Michigan Department of Civil Rights (MDCR) is appalled at the Commission's conduct. The MDCR issued a press release on May 21, 2007 in response to the Commission's action:

"While neither the [Michigan Civil Rights Commission] nor [Michigan Department of Civil Rights] has any current involvement or legal interest in the matter involving Judge Nettles-Nickerson, it is imperative to clarify that the legal right of Michigan residents and visitors to file complaints with the Michigan Department of Civil Rights is protected. Both the Elliott-Larsen and Persons with Disabilities Civil Rights Acts explicitly provide protection from acts of retaliation for civil rights activity, including filing a complaint with MDCR.

It is our sincere hope that the JTC did not intend to imply that Judge Nettles-Nickerson should be disciplined in any way for

exercising her right to file a civil rights complaint if she believed that she was being subjected to illegal discrimination. A suspension for filing an allegation of illegal discrimination would violate state and federal civil rights laws designed to protect those who stand up against discrimination from any acts of retaliation. Such a message from a legal authority would have a chilling effect on the state's ability to protect persons who legitimately believe they may be victims of illegal discrimination.

While we take no position on the veracity of any fact claimed by any party in this matter, we ask the Judicial Tenure Commission to amend its complaint that they are not seeking to discipline Judge Nettles-Nickerson for the act of filing her complaint with the Michigan Civil Rights Commission and Department.

We further call upon the Supreme Court and any appointed Special Master to clarify that, regardless of what decision they may ultimately reach in this matter, their ruling is in no way predicated upon the protected act of filing a complaint with the Michigan Department of Civil Rights.

See Attachment 45 (emphasis added). Judge Nettles-Nickerson had the legal right to file a civil rights complaint if she believed she was being subjected to illegal discrimination.

- 96) Judge Nettles-Nickerson admits this paragraph. Judge Nettles-Nickerson was contacted by a journalist from the Lansing State Journal and she gave direct and truthful answers to the questions addressed to her. On January 14, 2006, an article appeared in the Lansing State Journal concerning her filing of the MDCR complaint against Judge Collette (see Attachment 46).
- 97) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our responses to paragraphs 95 and 96.

- 98) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our responses to paragraphs 95 and 96.
- 99) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our responses to paragraphs 95 and 96.
- 100) Judge Nettles-Nickerson admits this paragraph. Subsequent to the filing of the MDCR complaint, Judge Nettles-Nickerson's colleagues attempted to intervene. Specifically, Judge Paula Manderfield and Judge James Giddings informed Judge Nettles-Nickerson that they would persuade Judge Collette to put the issues regarding dockets and court reporters on the agenda for the judges' meeting. Judge Giddings felt that the conflict between Judge Collette and Judge Nettles-Nickerson could be resolved internally, and also felt that the filing of the civil rights complaint was counter-productive. Based upon those assurances, Judge Nettles-Nickerson withdrew the civil rights complaint as well as her request for voluntary mediation. Judge Giddings provided an affidavit, in part addressing Judge Nettles-Nickerson's withdrawal of the civil rights complaint:

10. Judge Beverley Nettles-Nickerson thereafter filed a civil rights complaint.
11. When I became aware of the civil rights complaint, I told Judge Nettles-Nickerson that the filing of the civil rights complaint was counter productive and urged her to withdraw it.
12. Shortly thereafter, Judge Nettles-Nickerson withdrew her civil rights complaint.

See Attachment 47. Judge Nettles-Nickerson did not withdraw the complaint because Judge Collette's disparate treatment of her had ceased; she withdrew the complaint in an effort to ameliorate the situation.

On January 25, 2006, Judge Nettles-Nickerson sent the Lansing State Journal a press release regarding her withdrawal of the civil rights complaint and expressing her desire to resolve the issues internally and informally (see Attachment 48). The following day Judge Nettles-Nickerson sent an email to the other 30th Circuit Court judges, Mr. Easterday, and Mr. Hughes, again requesting that the court reporter issues be placed on the upcoming judges' meeting agenda (see Attachment 49).

Judge Collette, however, refused to place the items on the agenda. In fact, when Judge Collette was approached by Judge Giddings regarding the desire to have them placed on the agenda, Judge Collette informed Judge Giddings that if those topics were brought up at the judges' meeting, he (Judge Collette) would leave the meeting. True to his word, when the issues important to Judge Nettles-Nickerson were brought up, Judge Collette walked out of the meeting. Judge Giddings also addressed those actions in his affidavit, previously appended:

2. I am aware of a conflict in late 2005, between Chief Judge William E. Collette and Judge Beverly Nickerson over the operation of her court.
3. That conflict is in part reflected in a memo from Judge Collette to Judge Nickerson dated December 1, 2005.
4. Because I believed that the position being taken by Judge Collette might affect my courtroom operation, I sent a memo to Judge Collette on January 3, 2006, a copy of which is attached hereto.
5. I believed at the time that the conflict between Judge Collette and Judge Nickerson could have been resolved at a meeting of our fellow judges.

6. To that end I requested Judge Collette to meet with Judge Nickerson and our colleagues to resolve the issues.
7. Judge Collette made clear to me that he did not intend to discuss the matter with the other judges and would not place the matter on a judge's meeting agenda.

See Attachment 47. On January 27, 2006, Chief Justice Clifford W. Taylor sent a letter to Judge Collette and Judge Nettles-Nickerson. In that letter, Chief Justice Taylor explained that retired Judge Marvin Robertson had been designated by the Court to investigate the discrimination charges being made by Judge Nettles-Nickerson. Judge Taylor also indicated that Judge Robertson, who is white, would contact the individuals involved in the matter and informally report back to the Michigan Supreme Court. Judge Nettles-Nickerson later learned that, despite the fact that she met with Judge Robertson and supplied him with the names of five individuals who could support her claims, Judge Robertson only interviewed one of those individuals. Judge Robertson's investigation was not thorough and certainly was not fair.

Despite the fact that only one of Judge Nettles-Nickerson's witnesses were interviewed in regards to the investigation, on March 8, 2006, Mr. Gromek sent a letter to the Commission, in which he stated:

In a letter dated January 27, 2006, Chief Justice Clifford W. Taylor of the Michigan Supreme Court informed Chief Judge Collette and Judge Nettles-Nickerson that the Supreme Court had designated retired Judge Marvin Robertson to act as an informal fact finder. Over the weeks that followed, Judge Robertson interviewed both judges, as well as current members of the Ingham County bench. He interviewed numerous other witnesses, including retired judges and local attorneys. Because of witnesses' concerns about confidentiality, Judge Robertson reported only to the Justices of the

Michigan Supreme Court and the State Court Administrator. Judge Robertson found no evidence of racism on Judge Collette's part.

Although the allegation of racism has been disposed of, complaints exist about Judge Nettles-Nickerson's behavior and judgment. Pursuant to MCR 8.113 (B)(4), I request that you investigate this matter. **As Judge Nettles-Nickerson drew a great deal of public attention to the race issue, I ask that you expedite your investigation to the extent possible.**

See Attachment 50 (emphasis added). Mr. Gromek was clearly instructing the Commission to "get" Judge Nettles-Nickerson. That is Judge Nettles-Nickerson firm belief based upon the language used by Mr. Gromek in his letter.

- 101) Judge Nettles-Nickerson admits this paragraph. We incorporate by reference our response to paragraph 100.
- 102) Judge Nettles-Nickerson admits this paragraph. Judge Nettles-Nickerson's statements represented her true beliefs then and they represent her true beliefs today. We also incorporate by reference our response to paragraph 100.

C. Further unsubstantiated allegations of racial discrimination.

- 103) Judge Nettles-Nickerson admits this paragraph in part and denies it in part. She admits that she called a press conference in her courtroom and invited members of the media to the press conference. Judge Nettles-Nickerson denies that she "played the race card." Placing those words in quotes represents and truly defines the reason the Commission has instituted these proceedings. The Commission is acting as a watchdog to prevent an African-American jurist from pointing out disparate treatment she received from a white chief judge. The Commission is obviously seeking to punish Judge Nettles-Nickerson for having

the audacity to file a federal discrimination lawsuit against the Commission, on or about April 30, 2007.

Judge Nettles-Nickerson also admits that during the press conference in question she expressed her belief that Judge Collette treats her differently because she is African-American. Judge Nettles-Nickerson denies that her accusations are unsubstantiated.

- 104) Paragraphs 104(a)-(l) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

D. Other spurious allegations of racial discrimination or racism.

- 105) Judge Nettles-Nickerson denies this paragraph as being untrue.

a. Judge Nettles-Nickerson denies this paragraph as being untrue.

b. Judge Nettles-Nickerson denies this paragraph as being untrue.

To the best of Judge Nettles-Nickerson's knowledge, there has not been an open supervisory position in the 54-A District Court Probation Department for more than 18 years. It also should be noted that Judge Collette was instrumental in hiring Mr. Thiesan as the 54-A District Court Administrator.

c. Judge Nettles-Nickerson admits this paragraph in part and denies it in part. Judge Nettles-Nickerson admits that she was aware

that Mr. Thiesen had no authority relative to the assignment of cases. Judge Nettles-Nickerson denies that she made the statement attributed to her.

d. Judge Nettles-Nickerson denies this paragraph in the form stated.

Judge Nettles-Nickerson believed at the time and still believes today that the hiring practices in question were discriminatory.

e. Judge Nettles-Nickerson denies this paragraph. We incorporate by reference our response to paragraph 105(d).

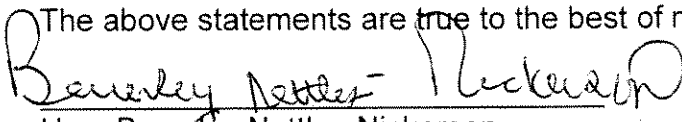
106) Paragraphs 106(a)-(m) contain legal conclusions which do not require an answer. To the extent that the Master or Commission feels that an answer is required, all of the legal conclusions are denied as being untrue.

AFFIRMATIVE DEFENSES

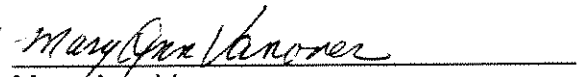
- 1) Laches: Judge Nettles-Nickerson is prejudiced by the delay in defending the allegations of the Complaint, which in some instances date back more than four to five years. This delay will result in faded memories and/or lost evidence. Specifically, Paragraph 46(a) and Paragraph 105(a)-(e) reference the period in time during which Judge Nettles-Nickerson was a district court judge (from 1990-2002).
- 2) Unconstitutional Vagueness: The Complaint is unconstitutionally vague, and denies Judge Nettles-Nickerson's right to due process, in that Paragraphs 41, 46 and 105 include language stating, "examples include, but are not limited, to" or "exemplified by, but limited not to the following." That charging language will permit the Commission to attempt to admit evidence regarding uncharged conduct. Additionally, numerous paragraphs of the Complaint do not reference any dates on which alleged conversations or actions occurred.
- 3) Abridgement of First Amendment Rights: The Complaint seeks to discipline Judge Nettles-Nickerson on the basis of her exercise of rights protected by the United States Constitution, Amend 1, *i.e.* in bringing charges of racism against the court and/or its employees.
- 4) Violation of Elliott-Larsen Act: The Complaint seeks to discipline Judge Nettles-Nickerson on the basis of her civil rights activity, specifically the fact that she filed a complaint with the Michigan Department of Civil Rights. MCL § 37.2101 et seq (Elliott-Larsen Civil Rights Act).

- 5) Race Discrimination: Judge Nettles-Nickerson is being selectively prosecuted based upon her race and/or the fact that she expressed concerns of racism against the chief judge of her court, SCAO, and/or the Commission.
- 6) Judge Nettles-Nickerson reserves the right to amend or supplement these affirmative defenses as this case proceeds and discovery is provided.


The above statements are true to the best of my knowledge, information, and belief.


Hon. Beverley Nettles-Nickerson

The foregoing instrument was sworn to before me this 30th day of May 2007, by Hon. Beverley Nettles-Nickerson.


Mary Ann Vanover
Notary Public, Wayne County, MI:
My commission expires: 04/30/2008

Respectfully submitted by:


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Dated: May 31, 2007